

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

MOTIONS HEARING (VIA ZOOM)

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

(Recorded via CourtSpeak; No log notes)

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25

1 HOUSTON, TEXAS; THURSDAY, MAY 6, 2021; 3:57 P.M.

2 THE COURT: All right. Good afternoon. We're in
3 the *Fieldwood Energy case*. Appearances of all have been
4 made electronically. If you haven't made your electronic
5 appearance, please make it as soon as you get off the phone
6 this afternoon.

7 We're going to start with the emergency motion
8 filed by Apache. If I can get lead on that for Apache as
9 well as lead for the respondent, I would ask you to press
10 five star on your phone.

11 (Pause in the proceeding.)

12 THE COURT: All right. Good afternoon, Mr. --
13 I'm sorry. I always have trouble with your name. Is it
14 Grzyb?

15 MR. GRZYB: Yes, Your Honor. It's -- it's Darren
16 Grzyb, Kay Deshane (phonetic) and -- and Josh Mossia
17 (phonetic) for the opponents for the motion, Aspen, Berkley,
18 Everes, and Sirius, Your Honor.

19 THE COURT: Thank you.

20 Ms. Russell?

21 MS. RUSSELL: Good afternoon, Your Honor. This
22 is Robin Russell on behalf of Apache Corporation. And I
23 have my partner, Mike Morfey, here with me today.

24 THE COURT: Thank you.

25 Mr. Morfey, is that --

1 MR. BRESCIA: Your Honor, I would like --

2 THE COURT: -- you?

3 Mr. Morfey, did I just add you from 713-220-4163?

4 MR. MORFEY: Yes, you did, Your Honor. Good
5 afternoon.

6 THE COURT: Good afternoon, Mr. Morfey.

7 All right. It's Mr. Morfey, your motion.

8 MR. GRZYB: Your Honor, may I -- may I, this is
9 Darren Grzyb, Your Honor. Apologize -- apologize for
10 interrupting.

11 May I ask that you add Robert Miller, and Phil
12 Eisenberg, and perhaps Duane Brescia?

13 THE COURT: I've got them. Let's see, I've got
14 one person here from 585-729-0803. Who is that?

15 MR. MILLER: Yes, Your Honor. That's Robert
16 Miller on behalf of Philadelphia Indemnity Insurance
17 Company. Thank you.

18 THE COURT: Mr. Miller. Good afternoon.

19 MR. MILLER: Good afternoon.

20 THE COURT: Got Mr. Brescia here. Mr. Brescia,
21 good afternoon to you.

22 MR. BRESCIA: Good afternoon, Your Honor. Duane
23 Brescia for Zurich American Insurance Company.

24 THE COURT: I don't have anyone else that has
25 pressed five star one time. There we go. There's someone

1 else that just came in. Hold on.

2 (Pause in the proceeding.)

3 THE COURT: Mr. Eisenberg, good afternoon.

4 MR. EISENBERG: Good afternoon, Your Honor.

5 Philip Eisenberg on behalf of HCCI.

6 THE COURT: Thank you.

7 Is there anyone else that needs to be added at
8 this point?

9 (No audible response.)

10 THE COURT: All right. Mr. Morfey, why don't you
11 go ahead, please?

12 MR. MORFEY: Your Honor, if it pleases the Court,
13 Ms. Russell is going to address a couple of preliminary
14 matters. And then I will take it away.

15 THE COURT: However you all want to handle it is
16 fine. Ms. Russell?

17 MS. RUSSELL: Thank you, Your Honor.

18 We're here on a discovery dispute. And Mike
19 Morfey is going to be presenting on that --

20 (Transmission disrupted)

21 MS. RUSSELL: -- but I thought that it would be
22 best to start by addressing some statements that were made
23 (transmission disrupted) objection. What I think is --

24 MR. MORFEY: Ms. Russell, we're having trouble
25 with -- we're having trouble with your phone.

1 MS. RUSSELL: All right. Is that any better?

2 THE COURT: Seems to be.

3 MS. RUSSELL: Is that any better?

4 THE COURT: Seems to -- yeah. I think it's
5 working once that phone is closer to you.

6 MS. RUSSELL: All right.

7 So we'd like to begin by addressing some
8 statements that were made in the surety's objections, which
9 I think explain the fundamental disconnect between the plan
10 and the surety's discovery requests.

11 So in paragraph 23 of the objection, the sureties
12 make two curious statements. First, that both Apache and
13 the sureties will be creditors appealed with one (telephone
14 feedback) following the defensive merger. And second, that
15 the sureties' positions in Fieldwood One Capital Structure
16 is likely to be the full term security.

17 So I'd like to address each of those. In the
18 2018 Fieldwood restructuring, Apache agreed to allow 150
19 million of the letter of credit exposure to be replaced by
20 bonds if they were a functional equivalent of credit.

21 So as the Court knows, the independence
22 principal, it tells us that the contract of indemnification
23 or reimbursement between the Debtor and the surety, or the
24 issuer of the letter of credit is independent. It is a pre-
25 petition contract and obligation that under 502(e) is often

1 contingent and unliquidated. And even is independent of the
2 obligation under the bond or the letter of credit to someone
3 in Apache's shoes.

4 So it is unclear to us how the sureties are
5 characterizing themselves as creditors of Fieldwood One,
6 which is the new entity that would be created after
7 confirmation.

8 As to the fulcrum security, if we look at the
9 plan, Fieldwood One is going to be owned by Fieldwood
10 Energy, Inc., which in turn is owned by the plan
11 administrator. And the general unsecured creditors of --
12 and I'll assume for this purpose that the sureties will end
13 up having a claim. They will be in that category of general
14 unsecured creditors which will have the interest in residual
15 value of Fieldwood Energy, Inc.

16 So they have no direct ownership interest in
17 Fieldwood One. And they'll have no relationship as a
18 creditor in Fieldwood One.

19 So the -- the subpoena that has been issued
20 focuses principally on information related to Fieldwood One,
21 and its business plan, and things that are completely within
22 the control of the Debtor as the owner of equity of
23 Fieldwood One. And it will be managed by someone hired by
24 the Debtor who has worked with the Debtor in preparing the
25 projections with Fieldwood One. Apache is not going to own

1 Fieldwood One. It's not going to control Fieldwood One.

2 The second part of the request is asking for
3 testimony by Apache with respect to its intent of how it
4 will perform in the future on a list of documents, you know,
5 each of which have an integration clause, each of which is
6 going to be a binding contract at confirmation.

7 There's no assertion that any of those agreements
8 are ambiguous. And, in fact, they're not. They can all be
9 looked out on their face as presenting the intent of the
10 parties.

11 So the request in the context of the plan seems
12 to -- to not make sense, quite frankly. And with that, I
13 would like to turn it over to Mr. Morfey who can address the
14 legal aspects of the subpoena.

15 THE COURT: Ms. Russell, is it your position that
16 Apache not only has no control in Fieldwood One, but has no
17 ability to select persons who will be in control of
18 Fieldwood One?

19 MS. RUSSELL: In the original selection of John
20 Graham, it did have input. And Apache does have certain
21 consent rights. If there is a -- a desire on behalf of
22 Fieldwood One to dismiss or replace John Graham, then there
23 would be a consent right. And you will see then a -- a next
24 iteration of one of the documents that we have made clear
25 that if -- if they are seeking to remove a manager for, you

1 know, gross negligence or willful misconduct, that they can
2 do that with our consent.

3 THE COURT: All right. Thank you.

4 MS. RUSSELL: But we --

5 THE COURT: No. Go ahead. I didn't mean to
6 interrupt. I thought you were done.

7 MS. RUSSELL: No. We -- we -- it -- it is not
8 our intention to control. And we do not view certain
9 consent rights with respect to fundamental aspects of
10 Fieldwood One and its stated mission to just do the
11 decommissioning on the legacy Apache assets that any consent
12 rights that we have are just to insure that that purpose is
13 upheld.

14 THE COURT: All right. Thank you, Ms. Russell.
15 I'm -- we're getting a little static, and I don't know if
16 it's from you. But just to try and be sure, I'm going to go
17 ahead and mute your line. And if that turns out to be
18 something that interferes with your ability to participate,
19 press five star, wave, do something so that I can put you
20 back on so --

21 MS. RUSSELL: Thank you. And I --

22 THE COURT: -- whoops. I just cut you off.

23 So all right, Mr. Morfey, go ahead.

24 MR. MORFEY: Thank you, Your Honor.

25 So, Your Honor, just a little bit of brief

1 background to set the table on -- on where we're going in
2 terms of the timeline. So on April 6th the Court entered the
3 Scheduling Order governing the deadlines for discovery
4 leading up to confirmation. And the Court specifically set
5 a deadline of April 14th for discovery requests to be served.

6 The Court did not distinguish between written
7 discovery and by way of request for production,
8 interrogatories, or a subpoena. It was just all discovery
9 requests had to be served by April 14th.

10 That period passed. And Apache didn't see any
11 discovery whatsoever from the sureties. On April 16th, we
12 received what we call in our emergency motion the surety
13 letter from counsel for Everest and HCCI. And the -- the
14 surety letter, it's an eight page letter. And it goes into
15 great detail about a number of legal arguments that the
16 sureties contend may inhibit, or do inhibit, Apache's
17 ability to draw on surety bonds and decommissioning security
18 that's at issue in this bankruptcy.

19 So we received that two days after the April 14
20 discovery deadline. We get this letter outlining all of the
21 legal issues. And then a week after that on April 21st, we
22 are served, Apache is served, with the subpoena that we're
23 here on today.

24 And the subpoena has document requests, documents
25 that should be produced at this deposition that's currently

1 scheduled for May 10th, as well as a number of 30(b) (6)
2 topics that they're seeking to depose Apache on.

3 Here's our problem with that. With respect to
4 the document requests embedded in the subpoena, we believe
5 that those requests are, frankly, untimely and not proper.
6 Because they're clearly after that April 14th deadline that
7 the Court set.

8 I don't believe it's appropriate to split the
9 hair of whether is that a document request? Is it a
10 discovery request? Is it a -- is it a subpoena? The Court
11 entered its order for discovery requests to be served on
12 April 14th. I'm not going to presume to know what was in
13 Your Honor's mind, but just reading it on its face, when I
14 see discovery requests, I believe the intent likely was if
15 you want documents, you need to get your requests out by
16 April 14th. And that didn't happen.

17 So I think the document requests are pretty easy.
18 The -- the, perhaps more interesting issue is, should this
19 30(b) (6) deposition go forward at all. Obviously, Apache is
20 a non-Debtor in this case. The requests as Ms. Russell
21 touched on, are at least in my experience, pretty unusual
22 for a 30(b) (6) deposition.

23 There are six requests that begin with the phrase
24 "Apache's intent with respect to," and then a written
25 contract is named. It's the standby credit facility, the

1 farm-out agreement, joint development agreement, et cetera.
2 Those six requests that ask for a corporate representative
3 to testify on Apache's subjective intent with respect to
4 those documents.

5 That raises a number of problems. The -- the
6 first is, these are written, unambiguous contracts that can
7 be interpreted as a matter of law, and frankly, should be.
8 What Apache's intent was or wasn't in entering into those
9 agreements doesn't matter. There's no allegation of
10 ambiguity. And the Court will construe those as a matter of
11 law.

12 So discovery as to Apache's intent is irrelevant
13 on those grounds. Now maybe, and I'll confess, it's -- it's
14 somewhat confusing as to where the -- the intent is going.
15 Is it going to the documents? Is it going to as to what's
16 going to happen in the future?

17 If it goes to what's happening in -- in the
18 future, those types of hypothetical events aren't
19 appropriate for a corporate representative deposition.

20 I don't, frankly, even know, Your Honor, how I
21 would prepare a witness as you're obligated to under the
22 Rules, to field question on what do you intend to do in the
23 future with respect to the joint development agreement.

24 That's far too speculative. It's hypothetical.
25 It's overly broad. And it's improper for a 30(b) (6)

1 document. So those are the -- the problems with the intent
2 topics.

3 The other topics -- topics, one, two, three, and
4 eight pertain to Fieldwood One. For example, topic one is,
5 "Going forward plans for Fieldwood One,
6 including decommissioning plan, capital
7 projects, and plans to obtain new
8 bonding."

9 Those are questions for Fieldwood One and the
10 Debtors. Those aren't questions for Apache. We don't
11 control Fieldwood One.

12 And the other questions, or excuse me, the other
13 topics in those categories, one, two, three, and eight are
14 similar to that. They relate to Fieldwood One and we don't
15 believe that they're appropriately directed to Apache.

16 Lastly, topic nine has to do with communications
17 between Apache and the Government regarding (indiscernible)
18 surety bonds. That topic is not going to move the needle in
19 our estimate on confirmation one way or the other.

20 What difference does it make what communications
21 Apache may or may not have had with the Government about the
22 surety bonds? The bonds say what they say. They're a
23 written instrument. They can be construed as a matter of
24 law.

25 And, frankly, Your Honor, that's -- that last

1 topic kind of the what's the benefits here. What is the
2 benefit of this discovery for confirmation versus the burden
3 on Apache is really the -- the sum and substance of the
4 whole issue.

5 Rule 26, as Your Honor knows, requires discovery
6 to be proportional to the needs of the case. That obviously
7 means there has to be a need. There has to be a need. And
8 the Court is allowed to weigh that need against the benefits
9 and burdens on the parties that are required to respond.

10 There is no need for confirmation purposes to get
11 into these issues. These -- these written contracts can be
12 and should be construed as a matter of law. Intent doesn't
13 matter. What may happen in the future isn't the issue as to
14 whether the plan is confirmable or not. The plan speaks for
15 itself. The contracts speak for themselves. We don't need
16 to have discovery on hypothetical future events. And it's
17 not appropriate.

18 And so, Your Honor, what -- what we would propose
19 is that the subpoena be quashed in its entirety. No
20 30(b) (6) deposition because it's not appropriate. No
21 document requests because they're packaged within an
22 inappropriate 30(b) (6) subpoena and they're untimely.

23 And with that, Your Honor, I will pass the
24 argument to my learned opposing counsel.

25 THE COURT: All right. All right. Who's going

1 to take the lead for the subpoenaing parties? Is that going
2 to be you, Mr. Grzyb?

3 MR. GRZYB: Yes. If -- if it pleases the Court.

4 I will go first, Your Honor.

5 I represent four of the sureties, Aspen, Berkley,
6 Everest, and Sirius. All of my clients are impacted by the
7 creation of Fieldwood One. Everest has a common-law bond as
8 a part of that 2018 transaction in which Apache is the
9 obligee. My other surety clients have gold bonds, which
10 everyone on the call that's appearing today, has an
11 understanding of what that means, the objection about the
12 alleged vagueness with respect to that term I think is --
13 lacks merit.

14 So I will be addressing the subpoena and the
15 30(b) (6) topics and the relevance to the sureties' likely
16 plan of -- or -- or potential plan of objecting to the
17 confirmation of the plan.

18 Robert Miller represents Philadelphia Indemnity
19 Insurance Company will be addressing some of the 1123(a)(6)
20 and (a)(7) issues that we have with respect to the plan, and
21 it's relevance to the subpoena. And some of my other
22 colleagues, Mr. Eisenberg and Mr. Brescia, may chime in with
23 respect to the need for this discovery, this third-party
24 discovery.

25 Now my -- my opening comments talk about --

1 THE COURT: So let -- let -- let's go -- let's go
2 the question -- to that question.

3 I -- what gave your client the authority to send
4 out a subpoena?

5 MR. GRZYB: Well within the rules of -- Federal
6 Rules of Civil Procedure, Your Honor, and including as
7 incorporated by the Bankruptcy Rules.

8 THE COURT: Only if they're a party, right? They
9 got to be a party.

10 (Pause in the proceeding.)

11 THE COURT: A random person off the street can't
12 send a subpoena. A party can send a subpoena. Your
13 client's a party. Think that's probably the easy answer.

14 But if your client's a party, why isn't
15 Mr. Morfey's client a party? So I don't understand how we
16 make a distinction that says you can send out a legitimate
17 subpoena, but he's not a party. Cause it seems to me if
18 we're going to say that he's not a party, we got to say
19 you're not a party.

20 And the whole logic just doesn't make sense to
21 me. How did you get to send this out? You a party?

22 MR. GRZYB: Well, I -- I would agree, Your Honor,
23 that we're -- we're a party participating in this bankruptcy
24 and a likely objector.

25 THE COURT: Well you're either a party or not a

1 party. If you're a party, they're a party. Tell me how
2 you're a party and they're not a party. Cause that's the
3 situation that you got to win in order to be timely.

4 (Pause in the proceeding.)

5 MR. GRZYB: And as well, I don't know that I
6 would agree with that, Your Honor. Because the -- the
7 definition -- the notice for the deposition on this subpoena
8 is timely. I don't think that they can argue that it's not
9 timely.

10 THE COURT: No. Wait a minute. Wait a minute.

11 MR. GRZYB: Right?

12 THE COURT: Wait. Stop for a minute.

13 Explain to me how if you're a party, they are not
14 a party. Only parties can send subpoena. But if they are a
15 party, your whole argument is, that the subpoena wasn't
16 governed by the discovery order.

17 But you acknowledge in there that if it was, in
18 fact, sent to a party, it would be controlled by the
19 discovery order. You can't obfuscate the discovery order by
20 then sending out a subpoena rather than sending out a
21 request for production. And I think we're all -- I think
22 you'll acknowledge that.

23 So I need to understand how you can both send out
24 the subpoena and claim they are not a party.

25 MR. GRZYB: Well, I would say, Your Honor, that

1 under the Scheduling Order, that was a sort of a negotiated
2 and --

3 THE COURT: I would say that you should answer my
4 question.

5 MR. GRZYB: I -- I -- I'm trying to, Your Honor.

6 THE COURT: Well let's do that.

7 MR. GRZYB: And --

8 THE COURT: How are you a party that can send out
9 a subpoena and they are not a party?

10 MR. GRZYB: Well, I -- I -- forgive me if I'm
11 wrong, Your Honor. But I think you're asking me why should
12 we not have served discovery requests on Apache --

13 THE COURT: No, I'm asking you --

14 MR. GRZYB: -- for its documents --

15 THE COURT: I'm asking you how you are a party
16 and they are not a party.

17 (Pause in the proceeding.)

18 THE COURT: How are those two facts both truth?

19 (Pause in the proceeding.)

20 MR. GRZYB: I think that's -- respectfully, I
21 think that's a semantical difference.

22 THE COURT: No, you're making the semantical
23 difference --

24 MR. GRZYB: We are --

25 THE COURT: -- by arguing they're not a party.

1 That's what's silly about this.

2 They're a party. You're a party. You're late.

3 (Pause in the proceeding.)

4 THE COURT: Or you can argue to me that, in fact,
5 if you look at the rules you're not a party until you file
6 something, at which point you had no authority to send out
7 the deposition notice.

8 MR. GRZYB: Well, I -- I would argue, Your Honor,
9 that we're not late --

10 THE COURT: I mean a subpoena. Excuse me.

11 MR. GRZYB: -- that we're not late, Your Honor,
12 because the -- the -- the deadline for document demands,
13 discovery requests, related to the negotiated scheduling
14 order that we argued about and submitted to Your Honor with
15 the Debtors.

16 We were the objecting group as sureties that
17 said, you know, we needed more time. We needed some factual
18 discovery from the Debtor. And we argued and negotiated
19 that scheduling order with the Debtors in light of their
20 confirmation hearing objective and what they needed to do to
21 prepare their case, and what we needed to do to prepare our
22 case.

23 So the -- the -- that deadline for discovery
24 requests related to our interactions with the Debtor. So
25 whether we're a party or not a party --

1 THE COURT: That is -- that is not the argument
2 that you made in your written response. The argument you
3 made was that Mr. Morfey's client wasn't a party and,
4 therefore, you could send out a subpoena.

5 I want to hear an answer to my question, based
6 upon what logical basis can your client be a party and their
7 client is not a party. Cause I can't figure out the answer
8 to that.

9 (Pause in the proceeding.)

10 MR. GRZYB: If -- Your Honor, I -- I'm not -- I'm
11 not trying to avoid the question, Your Honor. I think
12 the -- the import of Apache in terms of its control over
13 Fieldwood One, and I disagree with the characterization of
14 my colleagues and adversary that they're not going to
15 consult Apache, because the documents -- I'm sorry,
16 Fieldwood One --

17 THE COURT: Yeah. Look.

18 MR. GRZYB: That's clearly --

19 THE COURT: This isn't going to go anywhere if
20 you won't answer the question. So let me see if one of your
21 co-counsel wants to tell me how it is possible that the
22 sureties are parties who sent out the subpoenas, but that
23 Apache is not a party. Somebody wants to tell me that,
24 otherwise, I'm simply going to find these aren't timely.

25 And if you then want to move, and I understand

1 there is like a footnote or something that says, change the
2 discovery deadline, well that's a whole different question.
3 And I'm not doing that on about two hours' notice.

4 But I want to understand. Otherwise, I'm simply
5 going to grant the motion, because it was untimely
6 discovery. And I'm not going to play a game and classify
7 you as a party and then not as a party because you think you
8 want the discovery. I think that's gamesmanship.

9 So somebody needs to explain how one side's a
10 party and the other side's not. Who wants to do it?

11 (Pause in the proceeding.)

12 THE COURT: All right. I'm granting the motion.
13 The subpoena is quashed.

14 MR. EISENBERG: Your Honor, I -- Your Honor?

15 THE COURT: Go ahead.

16 MR. EISENBERG: Your Honor, I apologize. This is
17 Philip Eisenberg.

18 The -- are you quashing the document portion of
19 the 30(b) (6) notice?

20 THE COURT: I'm quashing the entire subpoena.

21 MR. EISENBERG: Well, why -- why would we not be
22 able to take depositions? There was no deadline for
23 depositions for corporate representatives on topics by the
24 14th. We had a different deadline for depositions.

25 And -- and so, I'm -- I'm not sure I understand.

1 I understand the 30(b) (6) notice was on topics. The -- the
2 request for the documents was, to the extent that the
3 representatives will be relying on any documents, that, you
4 know, it -- it's part and parcel of the -- of the -- of the
5 30(b) (6) subpoena. But the deposition itself is different
6 than the actual document.

7 THE COURT: Okay. Take -- take -- take --

8 MR. EISENBERG: And I don't understand --

9 THE COURT: Take me to the order, Mr. Eisenberg,
10 and tell -- and show me where you are --

11 MR. EISENBERG: Okay.

12 THE COURT: -- in that order.

13 (Pause in the proceeding.)

14 MR. EISENBERG: Okay. I'm trying to -- I'm
15 trying to get my -- my technology to work here. I
16 apologize.

17 THE COURT: No, I mean, I -- I'm happy to open it
18 up if you can just tell me what order you're telling me sets
19 out a separate deposition schedule.

20 MR. EISENBERG: Well, no. We have a
21 scheduling -- we have a scheduling order for depositions.

22 THE COURT: Yeah. I just want to see that.

23 MR. EISENBERG: And --

24 THE COURT: I want to see that so that I can --

25 MR. EISENBERG: Yeah. I --

1 THE COURT: -- follow with the argument.

2 MR. EISENBERG: Can somebody -- I -- I don't have
3 that in my hand.

4 THE COURT: Or give me the date of it.

5 MR. BRESCIA: And, Your Honor, this is Duane
6 Brescia. If I may, and I think it's Docket Number 1224
7 dated April 6th.

8 MR. MILLER: That is correct. This is Robert
9 Miller.

10 THE COURT: Okay. I've got that open.

11 MR. EISENBERG: Thank you, Your Honor. I
12 apologize for not being able to work --

13 THE COURT: No.

14 MR. EISENBERG: -- the -- to be on the train and
15 open my other documents at the same time.

16 THE COURT: Okay.

17 MR. EISENBERG: I'm working with my internet
18 people.

19 (Pause in the proceeding.)

20 MR. EISENBERG: Mr. Mayer brought me a copy of
21 it.

22 So we have a -- a -- a witness deposition
23 deadline through May 10th. And the -- the discovery request
24 was and as Your Honor said, that was discovery request.
25 This is a 30(b) (6) for a witness, a corporate

1 representative. And we had till May 10th to accomplish that.

2 THE COURT: You -- you don't think --

3 MR. EISENBERG: So --

4 THE COURT: And -- and -- and, you know, I'm
5 willing to listen to this. But I assume the discovery
6 requests include requests for deposition.

7 MR. EISENBERG: No, Your Honor. Well, I didn't
8 assume that, Your Honor. I -- we felt that discovery
9 requests were written discovery. And then once we got the
10 written discovery, we would schedule a deposition. That's
11 the process that we're engaged in.

12 I've got -- discovery -- I did not believe that
13 the fact witness depositions are a different deadline. And
14 we have till May 10th to -- to accomplish that.

15 THE COURT: I thought that was -- no, I thought
16 that was for the taking of the depositions, not for the
17 request for the depositions.

18 MR. EISENBERG: Well then that is our confusion,
19 Your Honor.

20 I -- we did not --

21 THE COURT: Okay.

22 MR. EISENBERG: -- understand that at all.
23 And -- and I understand their position on the documents and
24 the part of the 30(b) (6). I thought that is -- that's
25 usually done typically for the ease of the witness, really,

1 to be honest with you. Cause they're going to refer to what
2 they looked at to prepare.

3 But no, Your Honor, we clearly thought we had
4 till May 10th to get the fact witness depositions done,
5 including the scheduling of them. We didn't know we had to
6 notice them of who we wanted to depose by April 14th.
7 That -- that would be -- I -- I did not understand that,
8 Your Honor.

9 THE COURT: Well, certainly, you were supposed
10 to --

11 MR. EISENBERG: And -- and it is not
12 (indiscernible) --

13 (Counsel and Court speaking concurrently.)

14 THE COURT: There was supposed to be a planning
15 meeting.

16 MR. EISENBERG: -- on purpose and
17 (indiscernible) .

18 THE COURT: Were there -- was there
19 correspondence amongst the parties coming out of that
20 disclosure statement, the planning meeting, that would have
21 clarified this in some way?

22 MR. EISENBERG: From the standpoint of not --
23 we -- we did not schedule any of these depositions until we
24 were going to get the -- the discovery responses, Your
25 Honor. And, I mean, get the request out.

1 We -- as far as I know, we did not, between the
2 parties, say who do you want to depose now.

3 THE COURT: Well the completion of responses --

4 MR. EISENBERG: And they depended --

5 THE COURT: -- to the discovery requests is April
6 30. And the deposition deadline is May 10th, but it started
7 April 2nd. So I'm not sure that's consistent.

8 (Pause in the proceeding.)

9 MR. EISENBERG: Well, Your Honor, I'm -- I'm just
10 trying to explain why, if Your Honor's asking us why the
11 actual deposition didn't get scheduled, because it was not
12 requested before --

13 THE COURT: No, I -- I --

14 MR. EISENBERG: -- at that, in fact --

15 THE COURT: I'm hearing that. And -- and then
16 let me hearing from Mr. Morfey what his position is about
17 depositions, the oral depositions.

18 MR. MORFEY: Sure, Your Honor.

19 And -- and I'll be candid with the Court. I was
20 not a party to any of the conversations that went into the
21 background of this document. All I can do is read it on its
22 face.

23 I -- I consider deposition notices to fall within
24 the broader umbrella of -- of discovery and, therefore, they
25 are discovery requests. That -- that -- that's how I

1 interpret that term.

2 (Pause in the proceeding.)

3 THE COURT: Look, if there's somebody else who
4 wants to address this, that's fine.

5 What I would suggest we do is that for not I'm
6 going to quash the written part on the party, party issue.
7 As to whether the depositions were intended to be allowed
8 after that, I had intended -- I had believed that when I
9 signed the order, I mean, you all proposed the order, that a
10 deposition request would be a discovery request.

11 There may be communications between the parties
12 that show something different than that. Or it may be
13 appropriate to grant relief from the order if there is
14 ambiguity that is now appearing that wasn't there before.

15 But I want the parties to have an opportunity to
16 review their correspondence, and their files, and to see if,
17 in fact, it was the intent of the parties, cause I mean, in
18 fairness you all drafted this order. I -- I know what I
19 thought it said.

20 But if there was something in the correspondence
21 that indicated something different than the plain meaning,
22 and that is the depositions could be requested, you know,
23 after April 14th, I -- I want to see that. And I don't want
24 to try and make a decision today before people can go scour
25 their files about that.

1 I'm also not precluding a motion to alter the
2 discovery deadlines if that's appropriate. But I -- I don't
3 know that's going to be appropriate. The fact that this is
4 important, I don't know that alone is good enough.

5 I mean, it was important enough that we went
6 through this whole discovery schedule so that we could get
7 to a deadline and get everybody prepared for it. But
8 I'll -- I will allow Mr. Eisenberg on your argument, people
9 to submit written communications that might reflect
10 something different, or a motion.

11 MR. EISENBERG: Well, we -- we -- we appreciate
12 that, Your Honor. And -- and I think you can -- one of --
13 one of the indicators here with regard to the differences
14 between written discovery and -- and -- and oral
15 depositions, Your Honor, is the response -- the motion that
16 you got from Apache.

17 The -- the -- the written discovery, they
18 addressed because of the April 14th deadline. The topics
19 themselves, I don't believe they were arguing that a
20 30(b) (6) witness fell within that.

21 We -- we certainly didn't understand discovery
22 requests. We thought that that meant written discovery
23 requests. We did not believe that was to take depositions.
24 We thought we had through the 10th of May without an
25 extension for cause to -- to do that, Your Honor. And --

1 and --

2 THE COURT: Part of this goes to the party, party
3 issue --

4 MR. EISENBERG: -- and I will --

5 THE COURT: -- because what's normal, of course,
6 is you submit a notice of deposition, not a subpoena. But
7 let me see what --

8 MR. EISENBERG: Right.

9 THE COURT: -- the correspondence shows.

10 And if you want to include that argument, you can
11 include it. I think you're being hit cold by what I'm
12 getting -- what I'm saying going to do. And I want to give
13 you a chance to prepare to argue against to not to do it
14 without notice.

15 MR. EISENBERG: We -- no, we certainly don't --
16 we appreciate that, Your Honor.

17 We certainly believe that there's any real crisis
18 here. Apache, as Your Honor knows, until Apache entered
19 into its agreement with the Debtor, they couldn't even file
20 the bankruptcy. For them to minimize their role here I
21 think is -- is -- is -- is, you know --

22 THE COURT: I'm not hearing them minimize their
23 role.

24 MR. EISENBERG: -- well combines the end of --

25 THE COURT: I'm -- I'm hearing them minimize

1 their future level of control. And there is a big
2 difference in those two. And I -- it may be that -- that
3 the documents say something different. Let me get you all
4 to file something.

5 Mr. Miller, you wanted to address this as well?
6 Or -- or does that satisfy what you wanted to suggest?

7 MR. MILLER: Your Honor, thank you for coming
8 back to me.

9 I would only see my role as being more to deal
10 with Ms. Russell's artful argument. So I appreciate
11 Mr. Eisenberg's statement and I think it's appropriate for
12 us to give a further statement to the Court on this issue.

13 THE COURT: Thank you.

14 MR. GRZYB: May I add one -- one more point, Your
15 Honor. This is Darren Grzyb again.

16 THE COURT: Of course.

17 MR. GRZYB: In looking at, you know, numbered
18 paragraph two of the scheduling order. It provides a
19 mechanism by which the parties are to meet and confer if
20 there's discovery dispute.

21 Now I see that there -- there are dates in the
22 scheduling order. But my view of paragraph two, Your Honor,
23 is that if reasonable counsel can discuss without involving
24 the Court's time, modifications to these dates, that that's
25 covered by paragraph two.

1 So to the extent we relate with respect to the
2 documents, then it would seem a reasonable interpretation of
3 the order and paragraph two, that this -- the dates have a
4 little play in them, provided that we're not asking for a
5 modification of the confirmation order for our date.

6 THE COURT: I -- I hear you. And I'm going to
7 let you all file what you want to file about -- if -- if you
8 can't reach an agreement. And I would suggest the parties
9 do meet and confer. If you all can't reach an agreement,
10 I'm saying you can file a motion to change the deadlines.
11 We'll get that -- we'll listen to you.

12 MR. GRZYB: Appreciate that, Your Honor.

13 THE COURT: All right. I'm going to grant the
14 motion provisionally, subject to the oral depositions being
15 allowed, based on an interpretation of my own order, and
16 subject to a motion to extend deadlines which will be
17 considered on its merits. But for today, I'm quashing.

18 Let's go to BP.

19 (Pause in the proceeding.)

20 THE COURT: Mr. Duewall, good afternoon.

21 MR. DUEWALL: Good afternoon, Your Honor, Craig
22 Duewall on behalf of BP. I wanted to confirm that my audio
23 is clear, Your Honor.

24 THE COURT: It is. Thank you.

25 And Mr. Perez.

1 MR. PEREZ: Good afternoon, Your Honor.

2 THE COURT: Good afternoon. All right. I think
3 this is BP's motion.

4 MR. DUEWALL: Yes, Your Honor. Thank you.

5 BP today brings forth a Motion to Compel and
6 seeks production of three categories of items or
7 information. One, the offers received by Fieldwood during
8 the pre-petition and post-petition sales process. Two, the
9 identity of the parties that executed NDA's, and potentially
10 entered and -- and looked at the data room during the sales
11 process. And lastly, we're seeking production of the
12 management presentations and the sales process video data --
13 data room that's referenced in the Debtor's disclosures.

14 We previewed this issue previously before the
15 Court. But just as background, the Court will recall that
16 in Document 1285, the -- the Disclosure Statement, which was
17 filed with the Court on 4/15/21. And I'm specifically
18 referencing page 17 of 99.

19 The -- the Debtors discussed their M&A process.
20 Within that paragraph there they talk about the robust sales
21 and marketing process that they engaged in. They tell us
22 that occurred between June of 2020 and September of 2020.
23 They say that it continued post -- after the petition date
24 that that process continued. They make representations
25 about the 18 parties that executed this confidentiality

1 agreement, the 15 management presentations, the 12 written
2 bid letters and other indications of interest, and they --
3 and they conclude by telling us that that information was --
4 was made available to the creditors committee.

5 And so that's the background of the information
6 that -- that we're seeking discovery on today, Your Honor.
7 The -- the motion that we filed and that is at document
8 1337, and on page 2 of our motion, we specifically itemize
9 and list the interrogatory number 4 there on page 2 of the
10 motion where we're seeking the identity of those parties
11 that I just described. Request for production number 24 and
12 25 referenced the video, the VDR, the video data room, in
13 the disclosure statement. And then the request for
14 production number 26 asks for the 15 management
15 presentations and the 12 written bid letters and other
16 indications of interest.

17 The parties, Your Honor, in full disclosure, have
18 tried repeatedly to -- to resolve these issues. We've had
19 numerous telephone calls, email exchanges, and we've been
20 unable to do so. We believe that these materials should be
21 produced because they're relevant with regard to process,
22 value, feasibility.

23 We believe they get to the who, what, and why of
24 the M&A process described in the disclosure statement. The
25 who being the individuals who looked at and executed the

1 NDA's. The what being the bids and offers that were
2 received during the process. And the why being the
3 information that was shared with these parties and potential
4 bidders that informed the actual bids and expressions of
5 interest that were received during that process.

6 And so who's executed the NDA and expressed an
7 interest, Your Honor. Those 18 days get to the who, I
8 believe that that's a direct representation and analysis on
9 value. And quite simply, Your Honor, I think most of the
10 parties have an understanding of who they think the players
11 are in terms of Gulf of Mexico interest or marketplace.

12 But who these parties were to enter the data room
13 and executed NDA's, give our experts who are also opining
14 with their own reasonable estimations of value a -- a -- a
15 determination as to whether that market is expanding or
16 contracting.

17 Are there new players that -- that entered and
18 expressed interest during this time period. It was less
19 than 12 months ago. Or -- or -- or who was looking around
20 the data room that forms what that sales process and market
21 looked like. And it -- and it goes to value.

22 I -- I also think it's relevant with regard to
23 feasibility. Because if a new company faces headwinds or
24 hardships in the future, an expending or contracting market
25 who the players are, sample in terms of empirical data

1 points with regard to who looked at it within the last 12
2 months. It closes that feasibility if there's a need to go
3 seek capital credit, or even sales -- try to sell the
4 assets, again, during another sales process in the not too
5 distant future.

6 So that's why we want to know who expressed
7 interest, who signed the NDA's, and who was expressing
8 interest in the data room. We're not looking, Your Honor,
9 to send those people discovery, harass those individuals.
10 We just want a list of who was looking at the assets.

11 Second, with regards to management presentations
12 and offers, and again, it's 5 -- or 15 management
13 presentations and 12 offers. Twenty -- twenty-seven
14 documents or material responses to -- to this request. Also
15 goes to value. And also goes to feasibility.

16 There's no better data point. And we can argue
17 about how much weight to put on the data point. But there's
18 really no better data point in terms of what the market
19 spoke to these assets than when the sales process took
20 place.

21 The -- the market looked at the assets,
22 especially if -- if we see the market reflecting and opining
23 what the value of new co. assets are in the -- in the past
24 12 months is, again, an important data point with regard
25 to -- to value, feasibility, and the process that was

1 engaged in to obtain those offers or expressions of
2 interest.

3 Again, if they're forced to sell in the future,
4 try to -- try to access capital, fees, what the -- what the
5 market that existed within the past 12 months I think is
6 relevant of that --

7 THE COURT: Mr. Duewall, are you asking for the
8 content of the offers or the identity of the offerors?

9 MR. DUEWALL: Both, Your Honor.

10 THE COURT: Why does the identity matter?

11 MR. DUEWALL: The identity matters because
12 it's -- I would like to, and our experts would like to, see
13 the names of the -- the individuals who expressed interest.
14 And it gives context to the offers that were actually
15 received.

16 By way of example, if -- if there are, and I'm
17 just using a -- a number by point of reference. If there's
18 20 active E&P operators in the Gulf of Mexico, I don't know
19 that to be the case. I'm just using that as an example.

20 THE COURT: No, that's fine.

21 MR. DUEWALL: And -- and all -- and 18 of them
22 came into the data room and expressed interest. There's
23 a -- there's a take away that can be taken there that the
24 market that currently exists for Gulf of Mexico properties
25 is limited to a number of companies that is currently

1 already there, or has been already -- already operating
2 there.

3 However, if the names -- if there's, you know, if
4 there's 10 companies out there that are generally believed
5 to be the operators, again, I'm not making a representation
6 that's the number, and we have 8 new companies who are
7 expressing interest in being active in the Gulf of Mexico,
8 then that, too, is a data point that it -- that -- that
9 provides at least some analysis and --

10 THE COURT: So I -- I --

11 MR. DUEWALL: -- and --

12 THE COURT: I'm following you to the NDA's.
13 I'm -- I don't know that I'm going to do it. But I
14 understand as to the NDA's why you would want the identity
15 of who signed an NDA.

16 I don't understand why you then need to be able
17 to know which of those entities are the ones who made
18 offers.

19 (Pause in the proceeding.)

20 MR. DUEWALL: Oh, I see the Court's question. If
21 that -- if that's what giving the Court concern, then I -- I
22 see the Court's point. And I'd -- I'd be willing to --
23 to -- I think that's a legitimate and valid concern, Your
24 Honor.

25 If it -- if the -- if the Debtors are concerned

1 that they don't see that XYZ Company made this offer,
2 then -- then redact the offer. And -- and -- but let us see
3 what the contents of the offer were so that we're able to
4 analyze how the market reacted to these assets being put up
5 for sale.

6 And -- and specifically, and what I think is
7 specifically important about the offers, is that, you know,
8 to the extent that, you know, the potential bidders were
9 making -- had conditions in their offers, or making offers
10 with regard to specific assets, I don't -- I don't know that
11 any of that's true, or -- or what those offers look like.

12 But I would be particularly -- it's of particular
13 importance to us to see these specific offers. So I don't
14 know if the Court was suggesting that we not see the
15 particular offers. But if the Court had pause with regards
16 to who made what offer, because that --

17 THE COURT: Who made any offer.

18 MR. DUEWALL: -- firm --

19 THE COURT: I have some pause as to who made any
20 offer, you know. It's one thing to say people come and look
21 at the data room. I -- I need to hear from Mr. Perez why
22 that needs to be maintained confidentially.

23 MR. DUEWALL: Sure. And just so the Court --

24 THE COURT: But you know --

25 MR. DUEWALL: Sorry, Your Honor.

1 THE COURT: -- you know, if -- if Shell made an
2 offer, it's -- I don't know why that matters who -- whether
3 it was Shell or Texaco. It -- it might. But I'm inclined
4 to think that ought to stay pretty confidential.

5 I don't know why you need, you know, they
6 emphasize in their response papers that by asking for the
7 entire data room, the granularity of the detail that would
8 require them with their competitor to go and redact
9 documents is just overwhelming.

10 And what you're focusing on are the management
11 presentations. They didn't focus on that in their
12 objection. So if you would move from the management
13 presentations, which are obviously going to be bigger
14 picture presentations, to the granularity that you end up
15 with by requesting 100 percent of the data room.

16 MR. DUEWALL: Yes, Your Honor. And just so that
17 the Court is clear before I move there, and I will move
18 there quickly.

19 We do not dispute that they can mark any of
20 this -- these materials confidential, expert's eyes only, or
21 the designation that they currently have them on -- under --

22 THE COURT: I understand.

23 MR. DUEWALL: -- is highly confidential so that
24 only the attorneys and the experts will see them.

25 So that will be true for whoever executed the

1 NDA's, or the presentations, or the offers, or the data room
2 information itself. So I just want to make the Court is
3 clear --

4 THE COURT: Yeah, I know that.

5 MR. DUEWALL: -- on that as well.

6 Okay. Thank you, Your Honor.

7 THE COURT: So why the need for granularity.

8 MR. DUEWALL: Lastly, with regard --

9 The granularity, Your Honor, I believe goes into
10 the -- the why of the process. The -- the why of -- if you
11 know what the parties were looking at, I -- I believe it --
12 it gives better context and better clarity to the -- the
13 offers that were made.

14 It's -- it's kind of the garbage in, garbage out
15 analysis. If we know what -- what was in the data room, and
16 were able -- and our experts are able to look at it, glean
17 that information and see if at any --

18 THE COURT: Well you -- you know what's in there
19 from the index. The index may not be perfect, but that
20 tells you what's in there. It doesn't tell you the
21 substance of what's in there. And they've offered you the
22 index, as I understand it, to at least one of the data
23 rooms.

24 MR. DUEWALL: They have, Your Honor.

25 But if you turn to document 1345, which is the

1 disclosures that was filed -- that were filed by Debtor's
2 counsel, document 1345, specifically page 4 of 10.

3 (Pause in the proceeding.)

4 THE COURT: Go there.

5 (Pause in the proceeding.)

6 MR. DUEWALL: They -- they have a copy of an
7 email that we sent to them during this process --

8 THE COURT: Oh. Right --

9 MR. DUEWALL: -- of trying before --

10 THE COURT: -- I -- I saw that. And -- and I
11 know that you're saying look, some of this is
12 indecipherable.

13 But let me assume for a minute that you got a
14 listing that identified in the English language by name what
15 each of the 25,500 documents were. Why do you need to see
16 what they say as opposed to what they were?

17 MR. DUEWALL: If they -- if they're able to
18 produce such a -- and index, Your Honor, that may mitigate
19 our request. I'm -- I -- I think that's rather burdensome.
20 And I think it's less burdensome just to produce the data
21 room itself, mark it highly confidential, allow our experts
22 to see it, and -- and allow them to access the data --

23 THE COURT: I -- I --

24 MR. DUEWALL: -- that way. That --

25 THE COURT: And -- and it -- and it may be. It

1 may be.

2 I want to hear from them. I mean, this is me
3 talking and not them talking. But I'm -- that's why -- I'm
4 just probing what you really needed here.

5 If you had anything else, I'd go ahead,
6 Mr. Duewall, otherwise, I want to hear from Mr. Perez.

7 MR. DUEWALL: That's it, Your Honor. I won't
8 repeat myself, except for just to remind the Court that our
9 expert deadlines are Monday. And so that's the reason we
10 needed to -- to emphasize these issues with the Court today.

11 THE COURT: Happy you're here.

12 Mr. Perez?

13 MR. DUEWALL: Thank you, Judge.

14 MR. PEREZ: Good afternoon, Your Honor. Alfredo
15 Perez.

16 Your Honor, first, let me start by saying that to
17 our knowledge, BP has not filed a proof of claim in this
18 case. They are a contract counter-party. And as the Court
19 knows we've had disputes with them. And -- and
20 unfortunately, I think we're going to have disputes with
21 them in the future regarding the operations of the -- the
22 Galapagos area, which is where the Genovesa (phonetic) well
23 is.

24 And so -- and they're also a -- a predecessor
25 with respect to some of the properties. So I -- I actually

1 don't know in what context, cause they don't really identify
2 in what context that they're bringing this.

3 And we're -- the -- the plan contemplates several
4 transactions, including a divisive merger that establishes
5 Fieldwood One that we talked about earlier. It also
6 contemplates that there'll be a sale of certain assets,
7 pursuant to the plan.

8 So those assets are -- are being sold. So I
9 haven't been able to identify what the plan objection is
10 that these -- that these are going for. They're talking
11 about feasibility. I don't know which feasibility they're
12 talking about.

13 The -- the data room that we're talking about
14 that had the 15 -- the 15 management visitations. And by
15 the way, that is one management presentation that was done
16 15 times. It's not --

17 THE COURT: Right.

18 MR. PEREZ: -- 15 different management
19 presentations.

20 That data room relates to the offshore assets,
21 the deep water assets, which include all of the assets that
22 are the subject of the disputes that we have with BP.
23 And -- and -- and so those are the assets that are being
24 sold, pursuant to the credit bid under the plan.

25 I don't understand if the allegation is that in

1 September of last year we ran a bad process. Even if that
2 were true, I'm not sure that that goes to any issue that's
3 triable in connection with confirmation, because we're not
4 relying on that process.

5 This is not a situation, Your Honor, where I'm
6 coming to the Court saying yes, we ran a great process,
7 therefore, you should sell it. And -- and we're not doing
8 that here, Your Honor.

9 We -- we are selling pursuant to a credit bid to
10 secured lenders. They're -- the -- the secured lenders,
11 when you add the -- the -- the first lien, first out -- the
12 first lien term loan and the second lien, which all have
13 good liens, and -- and -- and the -- and the values that
14 were ascribed pursuant to the plan and the credit bid
15 amount, you're still talking about a billion dollars of
16 claims that -- that will become unsecured claims. Well more
17 than a billion dollars.

18 And, Your Honor, number one, they -- BP submitted
19 two different requests for production of documents. One,
20 Your Honor, is at -- is -- it's Exhibit 6 in our witness and
21 exhibit list. So it's document 1346-6 relating to issues
22 relating to them -- to them as a predecessor and things like
23 that.

24 We responded to all of that. We responded
25 extensively to everyone, both in connection with formal

1 discovery as well as in connection with informal discovery,
2 which had been the topic of extensive discussions with you.

3 So, Your Honor, the -- for -- for -- for us --
4 and -- and -- and remember, Your Honor. This is BP. They're
5 one of the largest operators in the Gulf. For -- for them
6 to say that they don't know who's active in the Gulf and
7 what they're doing just defies logic.

8 So for them to want the people who we signed the
9 NDA's with, and the identity of each of the witnesses --
10 of -- of each, I'm sorry, of each of the -- of each of the
11 people who provided offers on a process that happened last
12 year that we're not relying on, we provided, you know,
13 Mr. Hanson's full valuation report with every document that
14 he considered in connection with that with respect to
15 valuation.

16 I'm not sure that I really understand what it is
17 that -- that -- that -- the basis for a -- a -- a process
18 that occurred that we're not relying on, that we didn't use
19 that happened last year. I don't know how that informs
20 Mr. -- Mr. Hanson value.

21 I guess -- I'm not sure if they're -- if they're
22 going to argue, well it should be less or it should be more.
23 And I don't know how it has anything to do with feasibility,
24 you know, and I'm not even sure feasibility is -- is
25 relevant here. We're selling assets under -- under a plan.

1 And -- and -- and the issue is do we, you know,
2 can we confirm the plan.

3 THE COURT: No. And I understand --

4 MR. PEREZ: I'm not sure.

5 THE COURT: But aren't you selling assets and
6 leaving people like BP with potential liabilities that
7 aren't going to be covered and the potential to have large
8 claims?

9 MR. PEREZ: Absolutely, Your Honor.

10 So -- so to the extent that they -- they -- they
11 believe that the -- the value is not what it was, then --
12 then, you know, they'll have their expert report and they'll
13 say no. They're stealing this. They should -- they should
14 pay \$500 million more.

15 Well, Your Honor, they say they should pay \$500
16 million more. We're still -- we're still 500 million in the
17 hole. But -- but that -- but that's not really what this
18 goes to.

19 This goes to -- this goes to a process that
20 basically fails back in -- in last year. And -- and -- and
21 furthermore, Your Honor, I have -- I probably had four or
22 five conversations with Mr. Duewall.

23 And I said tell me what it is that you want.
24 Tell me what your expert wants. And they -- and other than
25 I want the data room, I've never heard what the -- they said

1 I want the down hole pressure for each of the wells. I'm
2 sure that's in there.

3 The -- the image that we produced have 19,000
4 lines, 19,000 rows, each one representing one or more
5 documents. And -- and -- and -- and they picked out, you
6 know, a handful that had -- that didn't have an appropriate
7 description, but there are 19,000 of them.

8 THE COURT: I got that so I'm --

9 MR. PEREZ: And -- and what is it --

10 THE COURT: So tell me what the damage is, what
11 the imposition is, what the disadvantage is, of telling them
12 who signed NDA's. Not who made offers, who signed NDA's.
13 Why is that terribly confidential?

14 MR. PEREZ: We did not -- well, there is -- there
15 are confidentiality provisions. But under a PEO (phonetic)
16 we can tell them who signed -- who signed NDA's. We're
17 happy to do that.

18 In fact, and -- and -- and the other thing you
19 should know, Your Honor, is that the -- who had actually
20 went to BP, BP had no interest in doing this, other than
21 looking at Galapagos, which is the area that --

22 THE COURT: Right.

23 MR. PEREZ: -- we have a dispute about.

24 And then they decided they didn't want. So it's
25 not like they didn't know what was going on at the time.

1 THE COURT: But let me tell you what I think I
2 should order, and I want to hear you all argue against this.
3 This isn't an order yet.

4 I think with respect to the index, if there are
5 line items in the index that are unclear, including I think
6 they were nine of them or so, that were totally
7 uninterpretable to me, then the Debtor has to make the index
8 complete so that the names of the documents, or the
9 identification of the documents, are there. The documents
10 need not be produced.

11 It may be that this will trigger something that
12 ought to get produced. I don't know. But it's not falling
13 within what I'm inclined to order produced.

14 Number two, a management presentation that is the
15 one that is the most complete. If they're all identical, it
16 can just be one, needs to be produced. It may redact the
17 name of the entity to whom it was presented. And it may
18 redact any information concerning properties that are
19 subject to litigation with BP. But the balance of the
20 management presentation I think should probably get
21 produced.

22 Number three, the offers that have been received
23 should be produced, redacting all information about who is
24 making the offer and any information concerning the
25 properties that are subject to the litigation with BP.

1 Tell me what's wrong with that order.

2 (Pause in the proceeding.)

3 THE COURT: Go ahead. I've got it -- I've never
4 heard you two not talk. So it's good.

5 MR. PEREZ: Yeah, Your Honor. You know, looking
6 back at what the Court said, I -- I think I've made my
7 point.

8 THE COURT: Okay. Mr. Duewall, you okay?

9 MR. DUEWALL: Thank you, Your Honor.

10 And just for the record, we've -- we've always
11 gotten along with opposing counsel. And I don't want the
12 Court to think that we haven't. Even through this process,
13 we've -- we've been able to do that.

14 THE COURT: I --

15 MR. DUEWALL: But the only thing that gives me
16 pause -- I'm sorry, Judge.

17 THE COURT: No, I just -- I can't image it would
18 be any other way between the two of you all, but --

19 MR. DUEWALL: Thank -- thank you, Your Honor,
20 the -- two -- two points of clarity, or -- or maybe several.

21 Number one, the -- the lines that we highlight in
22 that email, excuse me, there's literally 10,000 or so like
23 that. And so just so the record is clear, we're happy to
24 get that charts updated as you've described. But I do think
25 that may be burdensome and I acknowledge that here. If

1 there's -- if there's another way that opposing counsel
2 wants to send that over, we'll gladly take a look at that.

3 Two, I don't -- I'm a little bit -- I don't know
4 what the modifier, and I'm not trying to be difficult, of
5 properties subject to potential litigation with BP or what
6 they're trying to accomplish with that, or what the Court's
7 concerns are. Specifically, if we're able to mark it
8 attorney's eyes only, expert's eyes only, I -- I do think
9 that --

10 THE COURT: Attorneys may be the last person who
11 they want to see if they've identified weaknesses in the
12 litigation. So I don't know what's in there.

13 But you know the properties that you're involved
14 in. You know them intimately. You don't need that
15 information. And the risk of interfering with the disputes
16 seems too great to me. That's why I'm going it that way.

17 MR. DUEWALL: Okay. So that's pretty -- I
18 understand, Judge.

19 But if they -- if they offered us, even if the
20 offer was made subject to those properties, we'll still see
21 what the offer was, correct?

22 THE COURT: You're going to see the offer, sure.

23 MR. DUEWALL: Yes. Yes. Okay.

24 And I understand what the Court's asking. I
25 think that's -- I think that's fine.

1 THE COURT: Okay. So Mr. Perez, you're telling
2 me that this is not, and -- and I'm -- I'm not holding
3 anybody to this. Mr. Duewall is offering that maybe what
4 I've done makes you identify 10,000 lines. I thought you
5 were telling me that it probably wasn't -- all that they've
6 identified are a handful. You didn't say all that all that
7 there are is a handful.

8 You all need to talk about this. If there's a
9 better way to do it than identifying the names, it's fine
10 with me. You know, if you only give him the cover page of
11 the document or something like that, I don't care.

12 I need him to know what the document's subject
13 matter is so that his experts can look at that range of
14 stuff and be sure that the data room's, you know, complete.
15 Okay.

16 MR. DUEWALL: And, Your Honor, is that something
17 we can have by five o'clock on Friday probably so our
18 experts could have the weekend to look it over before their
19 reports are due on Monday?

20 THE COURT: If you can't get it by five o'clock
21 on Friday, then you and Mr. Perez, are going to agree on an
22 extension of the expert deadline so that they do have time
23 to look over it.

24 MR. PEREZ: Thank you, Your Honor.

25 THE COURT: All right. Anything else we need to

1 do? Thank you all.

2 MR. DUEWALL: Nothing, Your Honor. Thank you.

3 THE COURT: By the way, I -- look. I know that
4 all today was about discovery requests and people don't like
5 burdening the Court with discovery requests. Please burden
6 me with that.

7 I would much rather have this to get to a
8 confirmation hearing where we're still having fights about
9 it. Whether you like the calls or don't like the calls,
10 it's important we resolve discovery disputes.

11 So bring them if you need to. Thank you.

12 MR. DUEWALL: And, Your Honor -- Your Honor, just
13 so that we're clear. Their -- their deadline to produce
14 everything to us is five o'clock Friday, I don't -- I just
15 wanted that made clear.

16 THE COURT: Five o'clock on Friday, but if they
17 can't make that, then you're going to get an extension of
18 getting your expert reports. And you all just need to work
19 through that.

20 I mean, look, if it's one document that's
21 delayed, I expect you guys to be reasonable about how that
22 extension's going to work.

23 MR. DUEWALL: I -- I understand, Your Honor. I
24 think they should probably be able to get us the
25 presentations and the offers by then. If they need a little

1 bit of extra time to populate these fields, we will -- we'll
2 work with them. Thank you, Judge.

3 THE COURT: Thank you. Thank you all.

4 I'm not going to do a written order, it's just
5 going to be a docket entry.

6 We are in adjournment.

7 (Proceeding adjourned at 5:04 p.m.)

8 * * * * *

9 *I certify that the foregoing is a correct*
10 *transcript to the best of my ability due to the condition of*
11 *the electronic sound recording of the ZOOM/telephonic*
12 *proceedings in the above-entitled matter.*

13 /S/ MARY D. HENRY

14 CERTIFIED BY THE AMERICAN ASSOCIATION OF
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17 JTT TRANSCRIPT #63964

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